

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3236 of 2005

Date of decision : 19.11.2007

Gurmukh Singh etc.

... Appellants

Versus

Paramjit Singh etc.

... Respondents

Present : Mr.K.S.Grewal, Advocate for the appellants.

Mr.S.N.Chopra, Advocate for the respondents.

Vinod K.Sharma, J. (Oral)

This Regular Second Appeal has been filed against the judgment and decree passed by the learned Additional District Judge, Fatehgarh Sahib, vide which appeal filed by the respondent-plaintiff was accepted and the judgment and decree passed by the learned trial Court dismissing the suit filed by the plaintiff was set aside and decree for declaration and joint possession was passed in favour of the plaintiff-respondent.

The plaintiff-respondents brought a suit for declaration and joint possession on the ground that they being daughters of Megh Singh were entitled to inherent 1/7 shares alongwith defendants No.1 to 4. It was the case of the plaintiff-respondents that Megh Singh father of the plaintiff-respondents was owner in possession of the suit land. He died in the year 1974 leaving behind four sons and three daughters. It was claimed that the defendants No.1 to 4 and plaintiff are only legal heirs of the deceased. It was also the case of the plaintiff-respondents that defendants No.1 to 4 have entered into possession of the suit land after the death of Megh Singh. It was

claimed that 'Will' propounded by defendants No.1 to 3 was forged and fabricated document. It was a result of fraud, misrepresentation, undue influence and coercion. It was further the case that defendants No.1 to 3 and Gurmail Singh got mutation sanctioned in their favour at the back of the plaintiff. The suit mutation was also challenged alleging to be illegal and null and void. It was the case of the plaintiff-respondents that they came to know about the mutation dated 30th July, 1990, when the copy of jamabandi was obtained. Thereafter, the request was made to the defendants to admit the claim of the plaintiffs. However, on their failure, the present suit was filed.

Defendants No.1 and 2 appeared and admitted the case set up by the plaintiff-respondents, whereas defendant No.3 claimed that Megh Singh had executed a 'Will' dated 28.9.1975 in favour of his four sons and window-Ram Kaur. It was also claimed that Megh Singh died on 11.10.1975. Defendants No.5 and 6 also took the same stand wherein, it was claimed that Megh Singh was died on 11.10.1975. The learned trial Court upheld the 'Will' and dismissed the suit filed by the plaintiff-respondents.

In appeal, the learned Lower Appellate Court held the 'Will' to be surrounded by suspicious circumstances and thereby reversed the finding of the learned trial Court on Issue No.3 and decreed the suit filed by the plaintiff-respondents. The reasons given for holding the 'Will' to be surrounded by suspicious circumstances by the learned Lower Appellate Court as under:-

1. Deprivation of the natural heirs by the testatrix.
2. Identification of the testatrix before the Sub-registrar by an Advocate of Calcutta who had acted as a lawyer of one of the executors in some cases.

3. The witnesses to the documents were interested in the appellants.
4. That in the 'Will' Exhibit D-1, no mention was made for disinheritance of the plaintiffs, who were unmarried daughters of the testator.
5. The 'Will' was produced after 9 years and two months of the death of the testator and therefore, it was held to be a suspicious circumstance.
6. The reasons given was that defendant-appellants had an opportunity to execute the said 'Will' when the revenue record was being changed after the death of the testator. It was also noticed by the learned Appellate Court that it was admitted case of the defendants that 'Will' executed exhibit D-1 was handed over to them three days before the death of the testator.
7. The death as given in the year of mutation was 4.8.1975 whereas, the Will was said to have been executed on 28.9.1975. Thus the 'Will' was executed subsequent to the date of death as given in the mutation proceedings.
8. That the defendant-appellant failed to produce the register of the subscribe to prove the 'Will' which was unregistered 'Will'.
9. That 'Will' was to be having tick marked at different places which were said to be another suspicious circumstance.
10. It was admitted by DW7 Gurmukh Singh that there were writing at the back of the 'Will' where the date was recorded as 13.11.1975 i.e. after the death of the testator even as per the case set up by the defendant-appellants.

In view of the suspicious circumstances mentioned above, finding on Issue No.3 was reversed and suit decreed by the learned lower Appellate Court.

The learned counsel appearing on behalf of the appellants has challenged the findings recorded by the learned Lower Appellate Court firstly, on the ground that order of mutation, on the basis of 'Will' was

passed in favour of the defendant-appellants in the presence of the plaintiff-respondents, where they had admitted the execution of the 'Will' and therefore, now they were estopped from challenging the said 'Will'. This plea of the learned counsel for the appellants has been duly considered by the learned Lower Appellate Court and it was observed that no estoppel could apply as the order was passed in summary proceedings without recording of the statements of the parties. Therefore, they were not bound by the observation made in the order. In support of this finding, the learned Appellate Court has placed reliance on the judgment of this Court in case of **Bhajan Singh vs. Jawant Kaur, 1996 (1) Civil Court Cases 628.**

Learned counsel for the appellants, therefore, by placing reliance on the judgment of this Court in case of **Sita Ram vs. R.D.Gupta and others, AIR 1981 P& H 83** contended that mere late production of the 'Will' could not be treated to be a suspicious circumstance, as it was for the plaintiff-respondents to show that the said 'Will' was not produced on earlier occasion having been arisen. The contention of the learned counsel for the appellants was that as they were in possession of the land therefore, there was no occasion it to produce the 'Will' till the application for sanction of the mutation was made. Therefore, the finding of the learned Appellate Court cannot not be sustained being contrary to the law laid down in the case of **Sita Ram (supra)**. However, this plea of the learned counsel for the appellants also cannot be accepted, as the learned lower Appellate Court has observed that after the death of Megh Singh, the revenue entries were changed in favour of the appellant –defendants and that was an occasion to produce the 'Will'. Therefore, the judgment relied upon by the learned counsel for the appellants in rebuttal was accepted by the learned Lower Appellate Court. Learned counsel for the appellants thereafter, pleaded that

the learned lower Appellate Court wrongly observed that there were interpolations in the 'Will'. The contention of the learned counsel for the appellants was that merely an address was incorporated, which could not be said to be an interpolation as it did not materially change the contents of the 'Will'. Learned Lower Appellate court has not rejected the 'Will' on the plea of wrongly interpolation, but on the ground that behind the 'Will' the date was mentioned as 30.11.1975, which is after the date of death of the testator and it was in this background that interpolation was treated to be a suspicious circumstances. Thus, no fault can be found with this finding which was recorded on appreciation of evidence. Learned counsel for the appellants, therefore, by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Rabindra Nath Mukherjee and another vs. Panchanam Banerjee (dead) by LRs and others, Vol.CXI [1995 (3)] PLR 594** contended that deprivation of natural heirs cannot be said to be a suspicious circumstance in the 'Will'. In support of this, reliance was placed on the judgment in case of **L.Ram Sukh Das vs. Hafiz-ul-Rahman and others, AIR 32 1945, Lahore 177.**

Thus it does not help the case of the appellants as there were reasons for doubting 'Will' but non-mentioning of the reasons for disinheriting the legal heirs, is to be treated as one of the suspicious circumstance. It is also inconsonance with law as the Hon'ble Supreme Court as well as this Court have been pleased to lay down that non-mentioning of the reasons for disinheritance of natural heirs is one of the suspicious circumstances which can be taken note of .

The learned counsel for the appellants also contended that the learned courts below were in error while accepting the date of death to be 11.10.1975 as in the written statement, the defendant-appellants has

specifically pleaded that Megh Singh died on 11.10.1975 and no replication was filed to the said pleadings and therefore, it was deemed admission which did not recall any proof by leading evidence. This contention of learned counsel for the appellants is also misconceived as the pleadings in the written statement cannot be said to be an admitted fact once in the plaint a specific stand was taken that Megh Singh died in the year 1974, even otherwise, the learned lower Appellate Court has not given any finding on the date of death of the testator but has held that the 'Will' is surrounded by suspicious circumstances for the reason that the date of death of the testator as given was prior to the date of execution of the 'Will'. It was on the basis of its suspicious circumstance which arises in the 'Will' the learned Appellate Court decided Issue No.3 against the defendants and in favour of the plaintiffs.

Lower Appellate Court being final court of finding of fact, no interference is called for in the finding recorded on appreciation of evidence by the learned Lower Appellate Court.

No substantial question of law arises for consideration in this appeal.

Dismissed.

[Vinod K.Sharma]

Judge

19.11.2007

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